



Board of Adjustment
Agendas & Minutes

MINUTES OF JUNE 5, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 5, 2006, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Secretary to the Board, Melissa Thibodeau – Zoning Inspector, and Mrs. Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the corrections to hear Case No. 9492 – Brett Reilly, Case No. 9508 – Christine Davis, Case No. 9509 – Mary J. Teti and Martha L. Gurney, Case No. 9510 – Joan E. Mellace and Case No. 9511 – David T. and Deborah D. Costello at the front of the agenda order. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 15, 2006 as circulated. Vote carried 5 – 0.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

Case No. 9492 – Brett Reilly – south of Road 270A, south of First Street, being Lot 1, Section C within Tru-Vale Acres development.

A variance from the front yard and side yard setback requirements.

Mr. Berl stated that Steve Becker was subpoenaed to attend the meeting.

Steve Becker was sworn in and testified on behalf of the Mobile Home Sales Company's roll in the placement of this mobile home; that he is the General Sales manager with Luv Homes as of December 2005; that the unit was sold without considering the steps; that he was not involved at the time of the sale; that the old sales manager was released in December 2005; that the unit was placed December 20, 2005; that the side yard steps can be reconfigured to comply with the setback requirements leaving just a need for a front yard variance; and that he will be personally responsible for any future mistakes and will see that no further mistakes are made on behalf of Luv Homes.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the

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variances for the side yards be **denied for the steps and that the front yard variance request be granted for the deck and steps since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9508 – Christine Davis – north of Route One, north of Tulip Drive, being Lot 1 within Dutch Acres development.

A variance from the side yard and rear yard setback requirements.

Ms. Hudson presented the case. Bill Schab, Attorney, was present on behalf of the application and testified requesting a 1.5-foot variance from the required 10-foot side yard setback requirement for an existing dwelling and a 0.4-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that a survey done for settlement showed the encroachment; that the dwelling has been on the lot for 25-years; that there is a concrete ramp attached to the existing shed; that the sellers were unaware of any encroachments; that there is no substantial effect to the community; that the structures have been on the lot for a number of years; and that it would create a hardship to correct the encroachment.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 19, 2006.** Vote carried 5 – 0.

Case No. 9509 – Mary J. Teti and Martha L. Gurney – southeast of Route 9, northeast of Quaker Road, being Lot 5 within Quaker Heights development.

A variance from the side yard and rear yard setback requirements.

Ms. Hudson presented the case. Bill Schab, Attorney, was present on behalf of the application, and testified requesting a 0.7-foot variance from the required 10-foot side yard setback requirement for an existing porch, a 2-foot variance from the required 5-foot side yard setback requirement and a 1.4-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that a survey done for settlement showed the encroachments; that the dwelling was built in 1972; that the porch was added in 1974;

that the shed was built on a concrete slab; that the structures have been on the lot for a number of years; that there is no substantial effect to the community; and that it would create a hardship to correct the encroachment.

The Board found that no parties appeared in support of or in opposition to the application.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 19, 2006**. Vote carried 5 – 0.

Case No. 9510 – Joan E. Mellace – northeast of Route One, northwest of Bryan Drive, being Lot 149 within Midway Estates development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Bill Schab, Attorney, was present on behalf of the application, and testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the encroachment was discovered by a survey done for settlement; that the dwelling was built in 1977; that it would create a hardship to remove a section of the dwelling; and that there is no substantial effect to the neighborhood.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is a minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9511 – David T. and Deborah D. Costello – west of Road 282, 516 feet south of Diane Drive, being Lot 11 within Arabian Acres development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Bill Schab, Attorney, was present on behalf of the application, and testified requesting a 1.5-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the encroachment was discovered when the property next door was put up for sale; that the prospective buyer wanted to be assured the encroachment would not make the adjacent lot unbuildable; that the dwelling was built in the 1970's; that the property line runs at a slight angle which may have caused the encroachment; and that it would be an extreme hardship to correct.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is a minimum variance to afford relief**. Vote carried 5 – 0.

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Case No. 9500 – Ronald Austin and Gail Ann Young – north of Route 54, northwest of Swann Drive, being Lot 35, Block A within Swann Keys Development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Ronald and Gail Young were sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that they own Lots 35 and 36; that they want to place a double-wide manufactured home on Lot 35; that the steps will pyramid down the side of the unit; that the Homeowner's Association is in support of the application; and that the unit is not on the lot.

Ms. Hudson included the air conditioning unit in their request.

By a show of hands 2 parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for a 2-foot variance on each side yard for the unit and a 2-foot variance for the air conditioning unit since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief**.
Vote carried 5 – 0.

Case No. 9501 – Richard G. and Fredericka S. M. Heller – south of Road 277, east of Angola Road East, being Lots 15 and ½ Lot 14, Block O, Section 2 within Angola By The Bay development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Cynthia Baker was sworn in with John Sergovic, Attorney, present on behalf of the application and testified requesting a 0.5-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the Applicant acquired the property in May 2004; that the dwelling was placed on the property in 1981; that the Homeowner's Association supports the location of the

dwelling; that the encroachment has gone unnoticed throughout numerous sales of the property; and that it is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the application.

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Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood, since it was not created by the Applicant and since it is the minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 9502 – Susan Frederick – east of Washington Street, 100 feet west of Route One intersection, being Unit 7 within Washington Court development.

A variance from the side yard and rear yard setback requirements and a variance from the separation requirement between units.

Ms. Hudson presented the case. Susan Frederick and Susan Lomas were sworn in and testified requesting a 7.6-foot variance from the required 10-foot rear yard setback requirement, a 38-foot variance from the required 40-foot separation requirement between units and a 2-foot variance from the required 10-foot side yard setback requirement for a second floor addition; that the proposed addition will create more useful living space; that the Applicant's daughter lives in the unit; that the property is surrounded by commercial properties; that they have taken their neighbor's privacy into consideration; and that the new structure will not encroach any further than the existing building.

Kim McKenzie was sworn in and testified in opposition to the application and stated that she has met with the Applicant; that the her unit is directly adjacent and above the Applicant's unit; that the proposed addition will block her view; that the windows in the proposed addition will be adjacent to her windows; that she feels she will lose her privacy; that this will effect her property value; and that the wall of the proposed addition will only be 5 1/2 feet from her unit.

In rebuttal, Susan Frederick, stated that the unit can be moved to the rear of the lot; that they went up on the same footprint to create a reasonable size living space; that they have proposed to put two small windows on the adjacent side from the opposition's unit; and that the proposed deck on the front will help to prevent blocking her view.

By a show of hands 2 parties appeared in support of the application.

By a show of hands 1 party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the

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variance be **granted with the stipulation that the second floor not extend past the front of the adjacent building, being Units 5 and 6, and that the proposed addition line up with the building itself.** Vote carried 5 – 0.

Case No. 9503 – Phillip Cross and Prentice Watkins – south of Route 18, 418 feet west of Stuart Drive.

A special use exception for a commercial greenhouse and nursery on less than five (5) acres.

Ms. Hudson presented the case. Phillip Cross and Prentice Watkins were sworn in and testified requesting a special use for a commercial greenhouse and nursery on less than five (5) acres; that the proposed produce stand will measure 30' x 30'; that they want to build several greenhouses on the property; that they will leave 20 to 30 feet between the greenhouses to allow for proper sunlight; that they will provide adequate parking to keep the traffic off the side of the road; that they plan to have a sign for the stand; and that the neighbors support the application.

By a show of hands 3 parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 19, 2006.** Vote carried 5 – 0.

Case No. 9504 – Evelyn Hunter – southeast of Route 54, south of Breakwater Run, being Lot 190 within Keenwick Sound Phase II development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Evelyn Hunter was sworn in and testified requesting an 11-inch variance from the required 5-foot rear yard setback requirement for an existing shed; that she hired a contractor to build a concrete pad; that the shed was attached to the concrete pad; that she obtained the building permit; and that her neighbor's are in support of the application.

By a show of hands 1 party appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

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Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and that it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9505 – Janice and Paul Heying – north of Route 54, west of Canvasback Road, being Lot 92, Block D within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Darrel Grear and Paul Heying were sworn in and testified requesting a 1.2-foot variance from the required 10-foot side yard setback requirement for a deck on both sides, a 2.2-foot variance from the required 10-foot side yard setback requirement for each side for a proposed manufactured home and a 6.2-foot variance from the required 10-foot side yard setback requirement for an air conditioning unit; that he is handicapped and needs more living space; and that the Homeowner's Association is in support of the application.

Ms. Hudson stated that the office received 1 letter in support of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 9506 – Country Sunrooms – northeast of Road 273A, north of First Street, being Lots 13 and 14, Block A within Bay Vista development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. John Layton and Susan Hunt were sworn in and testified requesting a 10.2-foot variance from the required 30-foot front yard setback requirement for an existing sunroom; that the sunroom was built on an existing deck; that the deck had already been granted a variance; that he did not realize when he obtained the building permit it was up to him to verify the addition would meet the setback

requirements; that they submitted pictures and a letter from the previous hearing; and that the neighbor's support the application.

Ms. Hudson stated that the office received 3 letters in support of the application.

The Board found that no parties appeared in support of or in opposition to the application.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9507 – Equity Homes – south of Road 88, east of Beulah Boulevard, being Lots 104 and 105 within Vincent Overlook development.

A special use exception to place a manufactured home type structure as a sales office and a special use exception for off site parking.

Ms. Hudson presented the case. Jeff Shooty and Grant Wade were sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office and a special use exception for off site parking; that the unit will measure 12'x 44'; that the unit is needed until the model dwelling can be built; that there will be adequate parking; that the area surrounding the unit will have landscaping; that their site contractor has gone out of business and cause some delay; and that 1-year should be more than enough time.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of one (1) year since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9512 – Paul and Vanessa Redefer – northeast of Road 273, northeast of Corofin Lane, being Lot 92-B within Kinsale Glen development.

A special use exception for determination of use (to retain a fence within a buffer zone).

Ms. Hudson presented the case. Paul and Vanessa Redefer were sworn in with John Sergovic, Attorney, present on behalf of the application, and testified requesting a special use exception for a determination of use to retain a fence within a buffer zone; that the property was originally purchased from the Truitt family; that prior to the

development this property was a golf course; that the adjacent property is Silver View Farms Mobile Home Park; that the mobile home park does not have the required 50-foot buffer zone; that the buffer zone is on the Kinsale Glen property; that the buffer zone is the entire back yard of the Applicant; that there was a fence on the property when the Applicant purchased the lot; that the Applicant purchased this lot due to the fact that the backyard was fenced in; that the Applicant erected their own fence adjacent to the existing fence; that the rear yard section of the fences have been removed; that since the

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removal of the fencing the tenants from the mobile home park have used the buffer area as a place to walk their dogs; that theft has occurred since the removal of the fences; that the Applicant cannot allow their child or dog play in the backyard; that they want to maintain a fence between the two existing rows of cypress trees; that the original RPC approval had a fence between Kinsale Glen and Silver View Farms until a natural buffer zone could be created; that the 50-foot buffer is within Kinsale Glen; that Silver View Farms used this property they once owned to meet the 50-foot buffer zone requirement for the mobile home park; and that the mobile home park owner was in objection to this development and that is when the issue of the fence was brought up.

James Truitt was sworn in and testified in opposition to the application and stated that he is the owner of Silver View Farms Mobile Home Park; that he contacted the County and asked what would become of the buffer when the property was sold; that he was told the buffer must be maintained; that all mobile home parks must have a 50-foot buffer zone surrounding the park; that these lots within the buffer zone should have never been developed as building lots; that they were introduced as tot lots; that the developers should have made the Applicant aware of the buffer zone; that the Planning and Zoning Commission approve this development with a natural buffer; that his tenants are not walking their dogs within the buffer zone; that there have been very few vandalism incidents within the mobile home park; that all of his tenants are interviewed extensively prior to moving in the park; and that his park is first class and has been since 1975.

Mr. Truitt questioned the authority of the Board to override a decision and conditions of approval imposed by the County Council.

The Board asked the opposition what effect the fence has to his park.

James Truitt stated that the fence will set a precedent; that the units in his park face the buffer zone; that uneven fencing is unattractive; that the natural buffer provides a softer feel between the properties; that the developer was well aware of the 50-foot buffer zone when they sold these lots; and that the approval of this will set a precedent to allow for further building within the buffer zone.

By a show of hands 4 parties appeared in support of the application.

By a show of hands 2 parties appeared in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until June 19, 2006**. Vote carried 5 – 0.

Case No. 9513 – Robert M. Jannone and Diane O’Connell – northeast of Road 273, northeast of Corofin Lane, being Lot 93 within Kinsale Glen development.

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A special use exception for determination of use (to retain a fence within buffer zone).

Ms. Hudson presented the case. Diane O’Connell was sworn in with John Sergovic, Attorney, present on behalf of the application and testified requesting a special use exception for determination of use to retain a fence within a buffer zone; that they want to incorporate the testimony from the previous case; that the Applicant purchased the property in October 2002; that a fence was along the properties at that time; that she erected a fence in March 2005 the same week the original fence was removed; that she had the Homeowner’s Association’s approval to erect the fence; that she was unaware the existing fence would ever be removed; and that they submitted pictures and drawings.

James Truitt was sworn in and testified in opposition to the application and stated that the fence was removed in July 2005; that he would also like to incorporate his testimony from the previous case; and that he feels there is possible legal issues and that the Applicant’s may have been misled in reference to the buffer zone.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the testimony from Case No. 9513 – Paul and Vanessa Redefer be incorporated with the testimony of this case. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 19, 2006**. Vote carried 5 – 0.

Case No. 9514 – Albert and Patricia Riedinger – north of Maryland Avenue, 350 feet east of Route One, being Lot 7, Section C.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Albert Riedinger was sworn in with John Sergovic, Attorney, present on behalf of the application, and testified requesting a 22.5-foot variance from the required 30-foot front yard setback requirement for a set of steps; that the Applicant was approved by the Board in 2003 to raise the dwelling; that the steps were not taken into consideration at the time of original variance hearing; that construction stopped on the steps in April 2006 as soon as they realized the steps would

not comply; that this is the only location for the steps due to the garage underneath the dwelling; and that they submitted pictures.

Dominick and Leslie Marra were sworn in and testified in opposition to the application and stated that they feel the Applicant was aware the steps would not meet the setback requirements; that they could have placed the dwelling further back on the

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property to allow room for the steps; that they thought the Applicant was going to construct an interior staircase to access the second floor; and that they submitted a letter.

By a show of hands 2 parties appeared in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 19, 2006**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9473 – George and Eugenia Romilly – east of Pennsylvania Avenue, south of Ayres Road, being Unit #4 within Sussex Shores.

A variance from the rear yard setback requirement.

The Board discussed the case which has been tabled since May 15, 2006.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9495 – Prestons Millsboro Auto Mart – northeast of Route One, 1,800 feet west of Road 271.

A special use exception for a tent sale and to place a manufactured home type structure as a sales office.

The Board discussed the case which has been tabled since May 15, 2006.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exceptions be **denied since it will substantially affect the use of neighboring properties**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 9480 – David and Anne Allen – northwest of Road 535, 54.68 feet east of Brown Street, being Lots 2, 3 and 4 within Charles G. Friedel Subdivision.

A variance from the front yard and side yard setback requirements.

Ms. Hudson read a letter from the Applicant requesting a rehearing.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request to re-apply be **granted and that the Applicant be required to pay the fee.**
Vote carried 5 – 0.

Meeting Adjourned 10:47 p.m.